CF0000061651

Cr A 1199/97.

Division Bench (Criminal)

APPEAL PRISONER S.T.No. 269/96

No. 606 Name दुरवुराम 2

Father's Name बुधु Resident ग्रा० केवाही थाना- छिंदगाँव

Age 52 वर्ष Sentenced to आजीवन कारावास on 24.12.96

Under Section 302 भा.द.वि. by सत्र न्यायाधीश जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by ~~a legal practitioner the Appellate Court~~ will not proceed with the base for seven days unless the ~~legal practitioner~~ appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

Recd 20/2/97 R.M. 63 12/6/97

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 24.12.96
3. Date on which appeal sent :- 6.1.97
4. Whether the prisoner wished to be represented or not :- Yes / ~~No.~~

No. 606 Name दुरवुराम पिता बुधु

Continued in पिछला Jail जगदलपुर

No. 525 /जे.को./ Dated 6.1.97

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
केन्द्रीय जेल प्रथम
जगदलपुर

Su perintendent Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 14.1.97

Date of receipt of record to accompany. with in time

Memo of Appeal of the Appellate Court.

No. 2(3) dated 15.1.97

Forwarded to the H'ble Sessions Judge Jagdalpur.

C. R. MAGISTRATE 15.1.97

Date of receipt in Applieate Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

17

आदेश पत्रक

मामला क्रमांक Cr. App. No. 119/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

22.02.2006

Dr. Shailesh Ahuja, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais.*

Per Dhirendra Mishra, J.

Accused/appellant Dukhuram has preferred this appeal against the judgment dated 24.12.1996 passed in Sessions Trial No.269/96 by which learned trial Judge after holding the accused/appellant guilty of causing death of his daughter-in-law Smt. Rambati has convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

The prosecution case, in brief, is that on 15.4.1996 in the afternoon at about 4.00 p.m. the appellant asked for meal from deceased Smt. Rambati, however, she refused to give meal on his untimely demand. The appellant being enraged by refusal picked up the axe and assaulted the deceased, who was trying to skip, after following her. Deceased fell on the ground and the appellant fled away from there. The deceased narrated the incident that appellant has assaulted her by axe. She was admitted in R.N.T. Hospital, Kondagaon. She lodged the Dehati Nalishi (Ex.P-12) on 16.4.1996 at about 1.15 a.m. in the Police Station Kondagaon, whereupon the offence under Section 307

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

19

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the Indian Penal Code was registered vide Ex.P-12. Dying Declaration was recorded vide Ex.P-10 by the Naib Tehsildar-cum-Executive Magistrate, Kondagaon on 16.4.1996 in between 7.35 a.m. to 7.45 a.m. Smt. Rambati died in the hospital during treatment at about 9.00 p.m., whereupon the offence was converted into Section 302 of the Indian Penal Code and Crime No.123/96 was registered vide Ex.P-13. After registering the offence, the police proceeded for investigation and conducted an inquest of the dead body vide Ex.P-5 in presence of the witnesses. Dead body was sent for postmortem to Maharani Hospital, Jagdalpur, where Dr. V.K. Jha (PW-6) conducted the postmortem over the dead body of deceased and submitted his report vide Ex.P-11. In the postmortem report the doctor found one abrasion injury over interior surface of chin and one stitched wound behind the neck over C-5 vertebra. Doctor opined that injuries were anti-mortem and the injury over the neck was sufficient to cause death in the ordinary course. On internal examination, he found that C-5 vertebra was cut and spinal cord was partially cut. The cause of death was opined as shock due to injury to spinal cord and same was homicidal in nature. Deceased was sent to the hospital for medical examination, MLC of Rambati was done by Dr. V.S. Dungar (PW-2) and medical examination report is Ex.P-7. The weapon of offence was sent for examination vide Ex.P-17 to the Assistant Surgeon, R.N.T. Hospital, Jagdalpur, who examined the weapon of offence and gave his report Ex.P-8 and opined that the injuries present over the person of Rambati could be caused by the weapon in question. Memorandum of accused was recorded on 21.4.1996.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

19

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

After completing the investigation, charge sheet was filed in the Court of learned Additional Chief Judicial Magistrate, Jagdalpur who in turn committed the case to learned Sessions Judge, Jagdalpur for trial. Learned Sessions Judge framed the charge under Section 302 of the Indian Penal Code. The accused abjured his guilt. The prosecution in order to establish its case examined seven witnesses in all. Statement of appellant was recorded by learned Sessions Judge under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and stated that he has been falsely implicated in the case.

After hearing counsel for the parties, learned Sessions Judge convicted and sentenced the accused as above.

Homicidal death of deceased Smt. Rambati is not in dispute. Even otherwise from perusal of the statement of Dr. V.K. Jha (PW-6), who performed autopsy on the dead body of deceased, and dying declaration given by the deceased before the Executive Magistrate wherein she has stated that the appellant caused assault on her by an axe, it is established that the death of Rambati was homicidal in nature.

So far as the involvement of the appellant in the instant offence is concerned, there is no eyewitness to the incident. The case of the prosecution is based on the dying declaration given by the deceased Rambati; firstly, the F.I.R. which was lodged at the instance of Rambati in the police station and secondly, the dying declaration made before the Executive Magistrate cum Naib Tehsildar wherein she has stated that appellant caused the above injury on her neck by the axe. The above dying declaration is corroborated by the statement of Dr. V.K. Jha, who has conducted the postmortem on the body of deceased and

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

20

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

found injury behind the neck of deceased on C-5 vertebra. Dying declaration has also corroborated by the MLC report Ex.P-7 when doctor treating Smt. Rambati found the incised wound behind the neck of Smt. Rambati. PW-2 Dr.V.S. Dungar, who treated Smt. Rambati after the incident, had found incised wound behind the neck of Smt. Rambati and stated that when he was treating Smt. Rambati, she was fully conscious. PW-3 Shri C.D. Singh, Naib Tehsildar, who recorded the dying declaration (Ex.P-10) of Smt. Rambati, has stated that Sub Divisional Magistrate, Kondagaon authorized him to record the dying declaration and whereupon he came to R.N.T. Hospital at about 7.35 a.m. in the morning and recorded the statement of Rambati in the presence of doctor. PW-4 Pagguram, who is grandson of the appellant in relation, has stated that Rambati informed him that accused assaulted here by axe for not giving meal and thereafter, Rambati was taken to Kondgaon Police Station on cot where she lodged the report and thereafter she was admitted in the hospital. PW-7 S.K. Pandey, Sub-Inspector has stated that Dehati Nalishi (Ex.P-12) was recorded on the basis of information given by Smt. Rambati.

Thus, on the basis of evidence of above witnesses and dying declaration of deceased Rambati, which is duly corroborated by Dehati Nalishi (Ex.P-12), and also from the statement of Pagguram (PW-4) the involvement of the appellant in committing the offence in question is established.

Learned counsel for the appellant submits that there was no enmity between the appellant and the deceased, as she was his daughter-in-law and the incident took place on the spur of moment, in

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

21

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the heat of passion, as the deceased did not provide meal on being demanded by the appellant. The offence was committed without pre-meditation on a sudden rage and the appellant gave only a single blow by axe on the back of the neck of the deceased and therefore, the offence does not travel beyond Section 304 Part II of the I.P.C.

On the other hand, learned Additional Public Prosecutor for the State supports the judgment of trial Court.

We have heard Dr. Ahuja, Advocate for the appellant & Shri U.N.S. Deo, Addl. Public Prosecutor for the State/respondent.

So far as the argument of learned counsel for the appellant that the incident took place all of a sudden without pre-meditation, in the spur of moment, in the heat of passion is concerned, from the evidence available on record, we find that there was no motive for the appellant to cause death and the incident took place as the appellant demanded meal at about 4.00 p.m. and the deceased refused his demand on the ground that it is untimely and this act of deceased enraged the appellant who picked up an axe and assaulted the deceased on the back of her neck and only one assault by axe was given by the appellant to deceased.

Taking into consideration the circumstances in which the offence was committed by the appellant and further considering that the appellant had no enmity and thereby no motive to cause death of deceased. Intention to cause death of Rambati cannot be attributed to the appellant, however, the manner in which assault was made upon the deceased on the neck by an axe, the fact that the appellant had

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

22

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

knowledge that the injury, which he is causing on the person of the deceased, may case his death is established.

In the result, the appeal is partly succeeds. Conviction awarded to appellant under Section 302 of the Cr.P.C. is hereby set aside, instead thereof, the appellant is convicted for commission of offence punishable under Section 304 Part-II of the Indian Penal Code. The appellant is in custody since April, 1996 and as such, he has completed almost 10 years in jail, therefore, in view of the above the appellant is sentenced to undergo the sentence already undergone by him. Appellant be set at liberty forthwith, if not required in connection with any other case.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

[पीछे देखिये

2-3-06 2-3-06 P/182/06